

1 JOHN S. BATTENFELD, State Bar No. 119513  
2 ALBERT HUANG, State Bar No. 193005  
3 MORGAN, LEWIS & BOCKIUS LLP  
300 South Grand Avenue  
4 Twenty-Second Floor  
Los Angeles, CA 90071-3132  
5 Tel: 213.612.2500  
Fax: 213.612.2501  
E-mail: jbattenfeld@morganlewis.com  
ahuang@morganlewis.com

6 ERIC MECKLEY, State Bar No. 168181  
7 STEVEN J. GARRETT, State Bar No. 221021  
8 MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco, CA 94105-1126  
9 Tel: 415.442.1000  
Fax: 415.442.1001  
10 E-mail: emeckley@morganlewis.com  
steven.garrett@morganlewis.com

11 Specially Appearing for Defendant  
12 CHARMING SHOPPES OF DELAWARE, INC.

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 SHAMEIKA MOODY, as an individual  
and on behalf of others similarly situated,

18 Plaintiff,

19 vs.  
20

21 CHARMING SHOPPES OF  
DELAWARE, INC., a corporation, and  
DOES 1 through 20, inclusive,

22 Defendant.  
23

Case No. C 07-06073 MHP

**DEFENDANT CHARMING SHOPPES OF  
DELAWARE, INC.'S *EX PARTE*  
APPLICATION TO FILE MOTION TO  
DISMISS FOR LACK OF PERSONAL  
JURISDICTION PURSUANT TO L.R. 7-10  
AND STANDING ORDER**

[Fed. R. Civ. Proc. 12(b)(2)]  
[SPECIAL APPEARANCE ONLY]

1 Pursuant to Local Civil Rule 7-10 and this Court's Standing Order, Defendant Charming  
2 Shoppes of Delaware, Inc. ("Defendant") respectfully submits this *ex parte* application to file a  
3 motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. Proc. 12(b)(2) for  
4 hearing on February 11, 2008. This request is based on this application, the pleadings and papers  
5 filed in this action, and any argument that the Court may deem necessary.

6 Defendant originally filed a motion to dismiss for lack of personal jurisdiction for hearing  
7 on January 16, 2008 before assigned United States Magistrate Judge Bernard Zimmerman. *See*  
8 Docket Entry Nos. 9-10 (December 7, 2007). This case was reassigned to this Court on  
9 December 11, 2007. *See* Docket Entry No. 17 (December 11, 2007). On December 12, 2007,  
10 this Court vacated all pending hearing dates and scheduled this case for a Case Management  
11 Conference on March 24, 2008. *See* Docket Entry No. 18 (December 12, 2007). This Court's  
12 Standing Order requires that "[m]otions to dismiss shall not be filed before the initial Case  
13 Management Conference except by leave of court." *See* Standing Order, Notice No. 4.

14 Defendant now seeks leave to file a motion to dismiss for lack of personal jurisdiction for  
15 hearing before this Court. The Court's calendar clerk advised counsel for Defendant that  
16 Defendant could concurrently file the motion to dismiss with this *ex parte* application. Thus,  
17 Defendant is concurrently filing with this *ex parte* application a motion to dismiss for lack of  
18 personal jurisdiction for hearing on February 11, 2008. Defendant argues in its motion that it has  
19 minimal contact with California. It does not have "substantial" or "continuous and systematic"  
20 contacts with California for general personal jurisdiction. Defendant also has not "purposely  
21 availed" itself of the privileges of doing business in California to establish specific personal  
22 jurisdiction. Thus, the exercise of personal jurisdiction over Defendant, which never employed  
23 Plaintiff (or anyone else in California), would violate federal due process requirements, and this  
24 Court must dismiss this action. Moreover, Plaintiff has recently filed a state court class action  
25 alleging the same causes of action against the correct defendant, Lane Bryant, Inc., which  
26 employed Plaintiff and does have the requisite "minimum contacts" for personal jurisdiction. *See*  
27 Defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss for Lack of  
28 Personal Jurisdiction (filed concurrently); *see* also Docket Entry No. 10.

1 For the foregoing reasons, Defendant respectfully requests that this Court grant its *ex*  
2 *parte* application to file a motion to dismiss for lack of personal jurisdiction pursuant to Fed. R.  
3 Civ. Proc. 12(b)(2) for hearing on February 11, 2008.

4  
5 Dated: January \_\_7, 2008

MORGAN, LEWIS & BOCKIUS LLP

6  
7 By \_\_\_\_\_/S/  
8 Albert Huang  
9 Specially Appearing for Defendant  
10 CHARMING SHOPPES OF  
11 DELAWARE, INC.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28